

not a deposit or account and is not federally insured or guaranteed"; and

(8) The savings association will be in compliance with its current capital requirements upon completion of the conversion stock offering.

(b) Securities sales practices, advertisements, and other sales literature used in connection with offers and sales of securities by savings associations shall be subject to § 563g.10 of this chapter.

(c) Offers and sales of securities of a savings association or its affiliates in any office of the savings association must use a one-page, unambiguous, certification in substantially the following form:

#### FORM OF CERTIFICATION

I ACKNOWLEDGE THAT THIS SECURITY IS NOT A DEPOSIT OR ACCOUNT AND IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT.

If anyone asserts that this security is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the [description of security being offered] of [name of issuer, name of savings association and affiliation to issuer (if different)], I received an offering circular.

The offering circular that I received contains disclosure concerning the nature of the security being offered and describes the risks involved in the investment, including:

[List briefly the principal risks involved and cross reference certain specified pages of the offering circular where a more complete description of the risks is made.]

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

(d) For purposes of this section, an "office" of an association means any premises used by the association that are identified to the public through advertising or signage using the association's name, trade name, or logo.

[57 FR 46088, Oct. 7, 1992]

#### § 563.80 Borrowing limitations.

(a) *General.* Except as the Office otherwise may permit by advice in writing, a savings association may borrow only in accordance with the provisions of this section.

(b) *Amount of borrowing.* A savings association may borrow up to the amount authorized by the laws under which the savings association operates.

(c) *Security.* An association may give security for borrowings subject to any requirements imposed by the Office or the FDIC regarding notice of default on borrowings and any FDIC right of first refusal to purchase collateral.

(d) *Required statement for all securities evidencing outside borrowings.* Each security shall bear on its face, in a prominent place, the following legend:

This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States.

(e) *Filing requirements for outside borrowings with maturities in excess of one year.* (1) Unless the savings association meets its capital requirement under part 567 of this chapter, it shall, at least ten business days prior to issuance, file with the Regional Director or his or her designee a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the items of the security, including:

- (i) Principal amount of the securities;
- (ii) Anticipated interest rate range and price range at which the securities are to be sold;
- (iii) Minimum denomination;
- (iv) Stated and average effective maturity;
- (v) Mandatory and optional prepayment provisions;
- (vi) Description, amount, and maintenance of collateral if any;
- (vii) Trustee provisions if any;
- (viii) Events of default and remedies of default;
- (ix) Any provisions which restrict, conditionally or otherwise, the operations of the association.

(2) The OTS shall have 10 business days after receipt of such filing to object to the issuance of such securities. The OTS shall object if the terms or covenants of the proposed issue place unreasonable burdens on, or control over, the operations of the association. If no objection is taken, the savings association shall have 120 calendar days within which to issue such securities.

(f) *Note accounts.* For purposes of this section, note accounts are not borrowings.

[54 FR 49552, Nov. 30, 1989, as amended at 55 FR 7300, Mar. 1, 1990; 55 FR 13515, Apr. 11, 1990; 57 FR 14345, Apr. 20, 1992; 57 FR 33438, July 29, 1992]

**§ 563.81 Issuance of subordinated debt securities and mandatorily redeemable preferred stock.**

(a) *General*—(1) *Savings associations receiving standard treatment.* No savings association subject to standard treatment of its applications under § 516.5 of this chapter may issue subordinated debt securities or mandatorily redeemable preferred stock includable in regulatory capital pursuant to this section or amend the terms of such securities unless it has obtained the written approval of OTS. Approval of the issuance under this section, in order to meet the requirements of § 567.5 of this chapter, may be obtained either before or after the securities are issued. No approval shall be granted unless issuance of the securities and the form and manner of filing of the application are in accordance with the provisions of this section.

(2) *Savings associations receiving expedited treatment.* No savings association eligible for expedited treatment under § 516.5 of this chapter may issue subordinated debt securities or mandatorily redeemable preferred stock pursuant to this section for inclusion in regulatory capital or amend the terms of such securities unless it provides notice to OTS, and such notice contains a statement of the association's intent to include such securities in regulatory capital. Notice should be made 30 days in advance of an issuance of subordinated debt securities or mandatorily redeemable preferred stock under this section, if the association intends to qualify such securities or stock as supplementary capital under § 567.5(b)(2) of this chapter. Notice may be made either before or after such securities are issued, but will only be includable in regulatory capital (to the extent permitted by § 567.5(b) of this chapter) if the issuance of the securities and the filing of the notice are in accordance with the provisions of this section and the savings association certifies, in

writing, to the Office that all regulatory requirements have been met. The Office reserves the right to determine after the 30-day notice period has expired that the issuance does not comply with the requirements of this section or those of Part 567 for inclusion in capital.

(b) *Eligibility requirements.* In determining whether an issuance of subordinated debt securities or mandatorily redeemable preferred stock is includable in the regulatory capital of a savings association pursuant to this section, the OTS will consider the following factors:

(1) Whether the issuance of such securities by the savings association is authorized by applicable law and regulation and is not inconsistent with any provision of the savings association's charter or bylaws. Proof of such provision shall be submitted with the notice or application;

(2)(i) Whether, in the opinion of the OTS the overall policies, condition and operation of the savings association do not afford a basis for supervisory objection to the application or notice. The OTS shall establish guidelines that shall identify supervisory bases that may be used to object to the inclusion of specific subordinated debt and preferred stock issuances as regulatory capital. Such guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt and mandatorily redeemable preferred stock applications and notices. Such bases for supervisory objection may include, but are not limited to instances where:

(A) Regulatory capital, without regard to the amount of any subordinated debt and mandatorily redeemable preferred stock to be included in regulatory capital, does not meet the requirements of § 567.2 of this chapter;

(B) Actual and expected losses have not been offset by specific and general valuation allowances to the extent required pursuant to § 563.160 and § 563.172 of this part; and

(C) Actual and anticipated income from operations, after distribution of earnings to the holders of savings accounts, payment of dividends on outstanding equity securities and payment